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Federal Communications Commission
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EX PARTE OR LATE FILED

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554Re: **NOTICE OF EX PARTE PRESENTATION**
MB Docket No. 04-312

Dear Ms. Dortch:

On May 3, 2005, the undersigned, along with Jay Ireland, Bill LeBeau, and Thelma Abril on behalf of NBC Telemundo License Co. ("Telemundo"); Richard Wiley and John Fiorini of Wiley Rein & Fielding, LLP, and Robert Olender of Koerner & Olender, PC, on behalf of Community Television Educators, Inc. ("CTE"); and Karinne Hernandez of the Hispanic Technology and Telecommunications Partnership on behalf of the League of United Latin American Citizens, met with Catherine Bohigian, media advisor to Chairman Kevin Martin, to discuss the above-referenced docket.

During the meeting, the parties discussed the matters set forth on the attached summary, which was distributed at the meeting and which highlights the compelling public interest benefits of the proposal pending before the Commission to exchange the commercial and noncommercial designations of Telemundo's Station KPHZ(TV), Channel 11, Holbrook, AZ, with CTE's Station KDTP(TV), Channel *39, Phoenix, AZ, and to modify the stations' licenses accordingly. The parties demonstrated that grant of the proposal will fulfill the Commission's goals of fostering localism, diversity, and competition in broadcast television for many reasons, including those detailed on the attached document. In addition, the parties noted that:

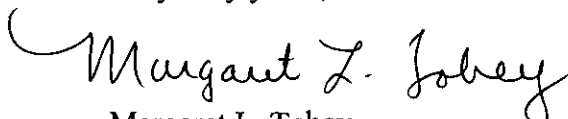
- Grant of the proposal will enable a net increase of approximately five hours per week in the local programming available from the relevant full-power station, as Telemundo has committed to air at least one hour per weekday of local Spanish-language news and community-oriented programming following adoption and implementation of the proposal.
- The unique circumstances surrounding the proposal support its grant, including:

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- Phoenix is the only remaining top-10 Hispanic television market without at least two competing full-power Spanish-language stations;
 - Each of the stations involved in the proposed exchange is new, with both having been on the air less than three years when the petition for rulemaking was filed;
 - But for a last-minute application, the FCC was prepared to delete Channel *39 entirely from the Table of Allotments to facilitate the digital transition;
 - Holbrook is at significant risk of becoming a white area if the proposal is not granted, as Channel 11 is Holbrook's sole over-the-air full-power television service and the station has never generated any revenues during its four and a half years of operation.
- As stated by the Media Bureau in the Notice of Proposed Rule Making, the Commission has the statutory authority to grant the proposal under Section 316 of the Communications Act of 1934, as amended even if it concludes that Section 1.420(h) of the Rules does not apply.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, an original and one copy of this letter have been submitted to the Office of the Secretary, and a PDF version of the letter has been sent by electronic mail to the Commission personnel who participated in the meeting. Questions concerning this submission should be addressed to the undersigned.

Very truly yours,


Margaret L. Tobey

Attachment

cc(w/att): Catherine Bohigian

THE STATION EXCHANGE PROPOSED BY CTE AND NBC TELEMUNDO WILL PROVIDE PHOENIX'S 900,000-PLUS HISPANIC RESIDENTS WITH THEIR FIRST FULL-POWER, OVER-THE-AIR COMPETITOR TO UNIVISION AND MAINTAIN HOLBROOK'S ACCESS TO ITS ONLY OVER THE AIR TV SERVICE

- ***In Phoenix, nearly a million Hispanic viewers – comprising the nation's 6th largest Hispanic population center and 9th largest Hispanic television market – have free, over-the-air access to only a single Spanish-language full-power television service: Univision's KTVW.***
- The GAO, the FCC and major Spanish-language broadcasters all agree that Hispanics – America's largest minority group – rely more heavily on free, over-the-air television service than other population segments. ***Univision agrees that roughly 45% of Phoenix Hispanic households rely solely on over-the-air TV.***
- Right now, a majority of Phoenix's Spanish-dominant viewers cannot reliably access Telemundo.
 - The theoretical projected service area of Telemundo's low-power Class A Phoenix affiliate does not reach almost 100,000 people within Univision's station's Grade B contour, even under the incorrect assumption that all households have an outdoor antenna. (A recent survey found that 41% of Phoenix's Spanish-dominant households rely on indoor antennas.)
 - But the real situation is much worse: ***a recent survey confirms that more than half of Phoenix's Spanish-dominant population does not watch Telemundo's local signal because of its weak signal, and more than three-quarters would watch Telemundo more if its signal was better.***
 - Testimony from dozens of advertisers in Phoenix confirms that they limit their ad buys on Telemundo's Class A station because of its weaker signal and lack of guaranteed basic-tier cable carriage. (A Phoenix cable subscriber has to pay \$37.95 per month to get the tier with the local Telemundo signal – which is \$22 more than the monthly fee for the basic tier that includes Univision.)
 - As Univision argued in support of its permanent waiver of the network representation rule, adequate ad revenues are a prerequisite to local Spanish-language programming, such as, if the proposal is granted, the greatly improved local news product that Telemundo will provide to Phoenix consumers.
- ***Dozens of Arizona federal and local officeholders – including Congressman Raul Grijalva, a leader of the Congressional Hispanic Caucus, Arizona Governor Janet Napolitano and Phoenix Mayor Phil Gordon – local businesses and community groups, and religious broadcasters across the country have asked the FCC to bring a competitive, full-power, Spanish-language station to Phoenix; only two parties – Telemundo competitors Univision and Council Tree -- oppose it.***
- Although the current FCC interpretation of Section 1.420(h) of the Commission's Rules arguably does not encompass the proposal, the public interest benefits of the proposal, in which CTE would exchange its Phoenix noncommercial UHF station for Telemundo's commercial VHF station in the Phoenix DMA community of Holbrook, Arizona (and a Phoenix Class A facility), more than justifies its adoption.
 - The FCC has recognized that fostering diversity and competition among Spanish-language services deserve special treatment in multiple contexts, including closed captioning, network representation, EEO posting, television spacing, allotment decisions, and others. Just two months ago, the Media Bureau concluded that the loss of even a single Spanish-language full-power television service to fewer than 14,000 over-the-air viewers in a market where there are 6 full-power Spanish-language stations justified blocking the early return of a station's analog spectrum.
 - The proposal will result in no net reduction of NCE stations in the Phoenix DMA and offers the best hope of preserving Holbrook's lone full-power television broadcast service.
 - But for a last-minute application, the FCC itself would have deleted the Phoenix NCE channel under the new allotment priorities developed for the digital transition.